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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

TRONOX INCORPORATED, et al.,

Debtors.

**TRONOX INCORPORATED, TRONOX
WORLDWIDE LLC f/k/a Kerr-McGee
Chemical Worldwide LLC, and TRONOX LLC
f/k/a Kerr-McGee Chemical LLC,**

Plaintiffs,

V.

**ANADARKO PETROLEUM CORPORATION
and KERR-McGEE CORPORATION, KERR-
MCGEE OIL & GAS CORPORATION, KERR-
MCGEE WORLDWIDE CORPORATION, KERR-
MCGEE INVESTMENT CORPORATION, KERR-
MCGEE CREDIT LLC, KERR-MCGEE SHARED
SERVICES COMPANY LLC, AND KERR-MCGEE
STORED POWER COMPANY LLC**

Defendants.

THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

V.

**TRONOX, INC., TRONOX WORLDWIDE LLC,
TRONOX LLC, KERR-McGEE CORPORATION
and ANADARKO PETROLEUM CORPORATION,**

Defendants.

) Chapter 11

) Case No. 09-10156 (ALG)

) Jointly Administered

) Adv. Pro. No. 09-01198 (ALG)

) **DEFENDANTS' MEMORANDUM OF**
) **LAW IN SUPPORT OF THEIR**
) **MOTION *IN LIMINE* TO EXCLUDE**
) **TESTIMONY OF THE AVOCADO**
) **WITNESSES**

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Defendants Anadarko Petroleum Corporation, Kerr-McGee Corporation, Kerr-McGee Oil & Gas Corporation, Kerr-McGee Worldwide Corporation, Kerr-McGee Investment Corporation, Kerr-McGee Credit LLC, Kerr-McGee Shared Services Company LLC and Kerr-McGee Stored Power Company LLC respectfully submit this memorandum of law in support of their Motion *In Limine* to Exclude Testimony of the Avoca Witnesses.¹

ARGUMENT

I. TESTIMONY BY AVOCA WITNESSES SHOULD BE EXCLUDED.

On December 22, 2011, the Court heard argument on Defendants' motion to exclude portions of the Powell Law Group's 30(b)(6) deposition testimony. The Powell Group had testified at length about the merits of creosote-exposure litigation involving a Tronox plant in Avoca, Pennsylvania. At the hearing, the Court repeatedly warned that it is "not going to try a creosote case in this litigation." Exh. A to Decl. of Thomas L. Lotterman (hereinafter "Decl.") (12/22/11 Transcript at 21:3-4); *see id.* 21:21-22 ("But I assure you, I'm not trying a creosote case"); 28:13-16 ("We're not trying any of the individual cases."); 28:23 ("I can't try a creosote case"). The Court later granted Defendants' motion.

On February 24, 2012, the parties exchanged witness lists. Decl. ¶ 4. Plaintiffs' list includes the following three designations: two Avoca tort claimants (Leonard Ash, Sr. and David Perks) and the former mayor of Avoca (James Haddock). *Id.* For all the reasons why the Court admonished the parties not to turn this litigation into a venue for trying the merits of toxic tort claims, the testimony of Plaintiffs' three Avoca witnesses is clearly a waste of time.² *See*

¹ The exhibits this memorandum mentions are attached to the Declaration of Thomas L. Lotterman, dated March 16, 2012 (the "Lotterman Declaration"), which is submitted along with the memorandum.

² While the Court's ruling on the Powell Law Group testimony specifically concerned alleged victims of creosote exposure at Avoca, its reasoning applies equally to testimony

Fed. R. Evid. 403; *In re MarketXT Holdings Corp.*, No. 04-12078, 2011 WL 1422012, at *6 (Bankr. S.D.N.Y. Jan. 7, 2011); *see also Gulf States Utils. Co. v. Ecodyne Corp.*, 635 F.2d 517, 519 (5th Cir. 1981) (“Excluding relevant evidence in a bench trial because it is cumulative or a waste of time is clearly a proper exercise of the judge’s power ...”). Therefore, Defendants move to strike the three Avoca witnesses from Plaintiffs’ list and to exclude their testimony at trial.

Dated: March 16, 2012

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concerning alleged impacts of other sites. Plaintiffs took a deposition of Perry Charley, who testified at length about alleged injuries to members of the Navajo Nation from uranium exposure. While Mr. Charley is not on Plaintiffs’ witness list, Edith Hood is. Ms. Hood is designated as a representative of the Navajo Nation. To the extent Ms. Hood’s testimony concerns personal injuries or harm allegedly caused by uranium exposure, it should be excluded for the same reasons as the Avoca witnesses.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 16, 2012, a true and correct copy of the foregoing was served on the following counsel of record by ECF and/or as indicated below:

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